

**ADEPT**  
**Legal Commentaries**

May 2005

## **Activity of the Parliament on May 2-6, 2005**

12 May 2005

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The legislature has held only one sitting in this period and examined several draft legislative documents which challenged controversial and long debates. Drafts on amendment of the education law were among them.

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### **I. Laws on amendment of the education law**

**Commentary by ADEPT:** The laws adopted by Parliament introduced new regulations on:

#### **1. Creation of institutions of higher learning by Moldova's president.**

This law allows the Moldovan president to decide on executive's proposals to create, reorganise or close up state-owned institutions of higher learning, as well as institutions of scientific researches, and staff training institutions. Also, the president was empowered to approve the statute of educational institution of the Moldovan presidential administration.

The law also entrusts the chief of state to appoint the rector of the institution of higher learning of the Moldovan presidential administration, while the university senate selects the rectors of other state-owned universities on basis of a contest, while the Government confirms them in offices.

#### **2. Modernisation of higher education and its readjustment to the process of integration in the European education.**

The law adopted after controversial debates comprises a number of norms aimed to readjust the higher education system of Moldova to the European education requirements, and adhesion to the so-called "Bologna Process" in 2005.

Thus, the law calls for organisation of higher education in two cycles: 3-4-year higher education for bachelor's degree and 1-2-year higher education for master's degree, and mandatory introduction of the European Credit Transfer System (ECTS) in all the institutions of higher learning.

Also, it calls for reorganisation of medical and pharmaceutical education through specialized higher education and post-university resident education.

It is presumed that organisation of higher education on cycles of studies will ensure the readjustment of the Moldovan higher education system to the education system within the European Higher Education Space. The introduction of ECTS will ensure the comparability and knowledge within an education study, regardless of the education institution of students.

Organisation of higher education on cycles of studies ensures a better coverage of needs of education, elimination of very narrowed specialties, development of jobs affected by a deficit of specialized staff and necessary from economic and cultural points of view, development of new qualifications in compliance with requirements of current times and of perspective of the labour market.

Under the law, the post-university education ensures specialization in the area or extension and improvement of scientific and pedagogical education. Admission in post-graduation education will be based on the following:

- a. contest for doctor's degree, studies after doctor's degree, and specialized courses;
- b. training courses at the request.

The post-graduation specialized studies will last at least one year, in dependence of profile, and they welcome graduates who hold master's degree.

The post-graduation training courses last maximum one year, in dependence of profile, and they welcome graduates who hold bachelor's degree or master's degree in higher education.

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## **II. Law on annulment of penalties and interest rates of the enterprise Combustibil Solid**

**Commentary by ADEPT:** a law adopted by Parliament annulled 11,300 U.S. dollars in interest rate and 182,100 dollars in penalties, calculated and unpaid by the joint stock society Combustibil-Solid for credits offered to buy coal from the loan released by a German bank to Moldova.

The explanation of this exemption rests with the failure of the Finance Ministry to honour payments towards Combustibil-Solid for coal supplied to the social sector, so that the company was unable to honour its payment obligations for the credit.

Representatives of the parliamentary opposition did not warm this draft, fearing that many shortcomings and breaches were registered when the coal contracted on basis of credit was distributed, and this harmed the state budget, and warned that the exemption accepted by Parliament may generate such unwanted phenomenons in future.

## **Activity of the Parliament on May 9-13, 2005**

24 May 2005

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The national radio and television channels broadcasted live the sittings held in the period concerned, and this fact left a clear mark upon the mode of tackling of issues included in agenda. If the Parliament had earlier discussed 10-15 draft laws in maximum one hour and half, it discussed the agenda alone for more than half an hour at the latest sittings, examined only several drafts and raised several questions to the executive the other three hours.

The situation has developed till indication of the state budget spending for televised broadcasting of the Parliament's works, in order to make the lawmakers to deliver shorter speeches. The parliamentary opposition representatives gave an unclear appreciation to these apostrophes.

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### **I. Law on Ratification of the Credit Agreement of the Council of Europe's Bank for Development**

**Commentary by ADEPT:** The ratified agreement calls for release of a six-million-euro credit as financing for the project Transfusion Security in Moldova. The loan is released for a 20-year period, including a five-year grace period, and a 2.5-percent annual interest rate.

The difficult situation in this sector highlights the need to implement this project:

- specialized equipment is not enough;
- existing equipment is used up more than 80 percent and provides no safe quality and inoffensiveness of technological process;
- transportation of blood products unfits the special rules, etc.

Implementation of this project, which costs about 10 million euros overall, would enhance the quality and efficiency of healthcare system by improving the quality and safety of blood and blood products at all the stages of the process, from collection to transfusion.

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### **II. Law on Amendment and Completion of the Law on Normative Price and Sale-purchase of Land**

**Commentary by ADEPT:** The law adopted by the Parliament prolonged the term for implementation of coefficients for reduction of sale price of fields adjacent to enterprises till 2007.

This amendment was needed because the experience confirms that the sale of adjacent plots for a normative price (about 600,000 lei per hectare) stops the process of privatization of fields, if the reduction coefficients are not used.

Nor the state can raise the planned amounts in such cases, while businesses face a difficult situation because they do not own the fields where they are located and work.

Also, the law modified the mode of distribution of financial means raised from sale and purchase of fields. Thus, it was established that the money raised from sale of state-owned fields is distributed the following way:

- 80 percent to the state budget;
- 20 percent to treasury accounts for special purposes.

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### **III. Law on Exemption of Sale of Agricultural Fields for construction of the Revaca-Cainari Railway Portion from Income Taxes**

**Commentary by ADEPT:** The law exempts from income taxes the individuals who obtain revenues from sale of agricultural fields to the State Agency for Land Relations and Cadastre, in order to transmit them to the state-owned railway company of Moldova.

The law aims to ease the construction of the Revaca-Cainari railway to surround the existing railroad in the Bender municipality, where the Transdnistrian separatist administration often blocks up trains and transports.

The state budget will lose about 800,000 lei for these facilities and these losses will be compensated later through a rise of cargo transportation and traffic.

This portion of railway will be built by the end of this year.

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### **IV. Law on Amendment and Completion of the Legislation on Social Protection of Job Seekers**

**Commentary by ADEPT:** The law calls for the following:

1. Establishing of the category of job seeker in order to register him as jobless person or to award him the right to benefit from unemployment assistance, professional integration or reintegration allocation, in line with the reason of relief from office indicated in labor card.
2. Establishing of a juridical status of private employment agencies.
3. Employment of rural population by allowing it to get employed in other settlements than where it resides.
4. Access of youths aged 16-18, graduates from boarding schools, orphan children, children without parent's care, children in tutelage, victims of trafficking in human beings, etc. to professional education.
5. Enlargement of categories of beneficiaries from unemployment assistance by introducing the people who tendered resignation, who will receive the right to unemployment assistance only if they get registered with employment agencies and fail to get employed for three months because of the lack of vacant jobs.

6. Increase of the number of beneficiaries from unemployment assistance by improving the mandatory due pay duration of person: the due pay duration will be reduced from 12 months down to six months.
  7. Reduction of the unemployment assistance from 50-60 percent down to 30-50 percent of the precedent salary, as the number of jobs with salaries below size of unemployment assistance has increased. The reduction of unemployment assistance allows the enlargement of categories of beneficiaries of this aid. At the same time, the real amount will not decline because salaries rose this year comparatively with 2004.
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## **V. Law on Amendment of the Law on Electricity**

**Commentary by ADEPT:** The law allows businesses and other consumers that administrate power grids of a 0.4-10 kW tension or energy lines and transformation stations of 35-110 kW, which are not exclusively used in the technological process to transmit them for free to energy distribution or transportation enterprises. The spending for further exploitation of power grids taken under administration is taken into account when the tariffs for transportation or distribution of electricity are established.

These amendments come in response to the fact that the maintenance of these grids and installations is expensive and not all the owners can afford its cost and employment of qualified staff. Also, the grids and installations have a certain value and their transmission to supplier makes the latter pay the income taxes and other related costs, so that such a transaction is not profitable.

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## **VI. Draft law on botanical gardens**

**Commentary by ADEPT:** The draft law approved in the first lecture aims to choose a statute of botanical gardens, which represent some geographically delimited areas, with sorts of representative and rare or jeopardized plants, created after anthropogenic activity to maintain the diversity of plants inside the country and from other geographical areas.

The law proposes a statute of public institutions working in science and innovation, ecological-cultural education sectors, regulated by the Code on Science and Innovation, and their subordination to the Moldovan Academy of Sciences and/or local public administration authorities.

The law indicates the key notions of this sector: collection, exhibition, genetic fund, etc.

Also, it proposes a mechanism for creation of botanical gardens: through delimitation of grounds and/or water territories under a special management regime for conservation, adaptation and regeneration under the best artificial conditions of sorts of local, allochthon and exotic plants, which are significant from scientific, economic and esthetic points of view, dendrological and flower collections which serve as depots of genetic fund and sources of reproductive material.

Sale and leasing of fields which are part of public botanical gardens will be prohibited.

The territory of botanical gardens will comprise several functional areas: exhibition, scientific, prohibited and auxiliary.

A protection zone of 100-150 meters will be established on territory adjacent to botanical gardens, in order to reduce the anthrop impact on botanical gardens.

The key tasks of botanical gardens will comprise among others the creation of collections and exhibitions of local and allochthon plants; artificial conservation of diversity of plants; scientific botanical researches; research of diversity of species of plants in the Moldovan territory; creation of seed funds; organization of exchange of seeds and plants, etc.

Botanical gardens will be financed in line with the Code on Science and Innovation: from the state budget, municipal budgets, budgets of administrative territorial units, means from own activity; means of ecological funds; investments (donations, grants, etc.) of individuals and businesses, etc.

Following activities will be prohibited in the protection zone of botanical gardens: unauthorized hunting, fishing and seizure of animals; construction of objects and depots for storage of chemical substances and mineral fertilizers, other items; installation of heating networks, electricity transportation lines; technical water works; extraction of stones, gravel, sand, fertile soil, or other works.

Following activities will be prohibited in botanical gardens: geological excavations; cutting and/or clearing of trees, bushes, saplings, brushwood or sapling-covered areas; hunting, destruction of ant hills, lairs, nests and caches; unauthorized harvesting and collection of medical plants, flowers, fruits; traffic of transports except for roads of common use or special fields; any whole constructions, except for constructions in auxiliary zone.

## **Activity of the Parliament on May 23-27, 2005**

31 May 2005

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During the aforesaid period legislators examined several draft laws, some of them of major importance to the public. Among others the drafts on unemployment aid and the draft abolishing sanctions on prostitution proved to be the most controversial ones.

Apart from the aforesaid drafts, legislators examined and passed a series of amendments aimed at bringing Moldovan normative acts in accordance with European standards.

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### **I. Law on the Modification and Completion of the Law on Employment and Social Security of the Unemployed**

**Commentary by ADEPT:** The goal of the law is to bring national laws in accordance with Labor Code and enhance social security of the unemployed.

The law also regulates the legal status of private employment agencies, coordination and control over their activity. One of the innovations of the law is that it allows for permanent employment in localities far from the place of residence. Ousted employees who would register with employment agencies would be also entitled to unemployment aid.

The provision on reducing the unemployment aid from 50-60% to 30-50% of the previous salary has triggered many debates. Many deputies objected on the grounds those people would be worse off, considering the inflation and raising cost of consumption basket.

Draft authors supported by majority faction replied that unemployment aid would in fact increase, i.e. in 2005 it would equal 500 Lei, in 2006 - 650 Lei, while in 2007 - 850 Lei. Those arguments convinced hesitating deputies to pass the law in the final reading.

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### **II. Law on Modification and Completion of the Law on the Status of Refugees**

**Commentary by ADEPT:** The amendments come in response to recently passed international documents in the field of refugees. The law includes new provisions on several institutions:

1. Humanitarian protection, institutions supported via the Council of Europe Recommendation of 2001 on subsidiary protection. According to Council of Europe the latter is to be provided by the states in conformity with decisions taken by the specialized bodies, to certain persons that do not fall under the provisions of 1951 Convention on Refugees, but need to be protected from threats and various ill treatments.
2. Council for Refugees which should be an administrative, consultative structure without any appeal or recourse powers.
3. Access of UN High Commissioner on refugees to applicants for asylum or refuge.



4. Applicant for asylum. The deadlines for applying to asylum are to be abolished as the person deserves to be protected regardless how many days passed since his/her arrival in the country.
5. Voluntary repatriation. This has been proven to be the most appropriate solution to refugee's problems, therefore the law provides such a repatriation as grounds for ceasing the refugee status.
6. Exclusions. The law also provides persons that might not apply for a refugee status.
7. Family reunification. This provision was included in the law so as to make possible family reunification in the Republic of Moldova.
8. Appeal. Provisions as regards appeal were brought in accordance with national and international law in the field.

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### **III. Resolution on granting "Valea Morilor" park in Chisinau the status of monument of architecture**

**Commentary by ADEPT:** Parliament passed such a decision in view of recovery and conservation of the "Valea Morilor" park, following a report by a working group responsible for fighting illegal construction in the park. The park was founded in 1951 and currently has 113.9 hectares. By including the park in the list of places under state protection, it would be preserved and become a center culture and recreation, a natural attraction.

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### **IV. Resolution on abolishing sanctions on prostitution**

**Commentary by ADEPT:** Parliament resolution that approved the Action-Plan in the field of Human Rights back in 2003 provides for amending the law so as to persecute both the person providing the service and the clients of such services. Since then the criminal law has changed and it does no longer sanction prostitution due to its low social harm. Prostitution continues to be sanctioned as a contravention. In most European countries the client of such services are not sanctioned, that is why Moldovan legislators considered there were no grounds to introduce such sanctions in Moldovan law.

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### **V. Draft law on modification of the Criminal Code and new regulations on torture**

**Commentary by ADEPT:** Parliament passed in a first reading a draft law completing Criminal Code with a new article on torture. Under the draft, intentional actions causing pain, physical or mental suffering in order to obtain from a person or a third party information or confessions so as to punish that person for an action he/she committed or is suspected of committing; intimidation or pressure on a third party, any form of discrimination, when such a pain or suffering are caused by a person in high position or at duty shall be sanctioned.

It was important to introduce the modification as there were no such provisions in the Criminal Code and there were numerous cases of torture registered in the Republic of Moldova.